

Opinion No. 75-59

October 31, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Carlos L. Jaramillo Director Department of Alcoholic Beverage Control Lew Wallace Building Santa Fe, New Mexico 87503

QUESTIONS

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1. Does Section 46-10-12.10, NMSA, 1953 Comp. (1973 Supp.) prohibit liquor licenses or their agents from permitting a police officer who is under the age of 21 years and in the lawful performance of his duties to be in attendance in or about the premises of a liquor establishment?
2. Does Section 46-10-12(B), NMSA, 1953 Comp. (1973 Supp.) prohibit a police officer who is under the age of 21 years and in the lawful performance of his duties from receiving or possessing liquor?

CONCLUSIONS

1. No.
2. No.

OPINION

{*159} ANALYSIS

Sections 46-10-12.10 and 46-10-12(B), NMSA, 1953 Comp. (1973 Supp.) provide as follows:

"46-10-12.10. Loitering of minors. -- Loitering of minors consists of the licensee, or his agent, of any liquor-licensed premises permitting a minor under the age of twenty-one [21] years to attend, frequent or loiter in or about the premises without being accompanied by the parent or guardian of the minor."

"46-10-12. Selling or giving liquor to minors -- Possession -- Minor defined. B. **It is a violation of the Liquor Control Act for any minor to buy, receive, possess or permit himself to be served with any alcoholic liquor** except when accompanied by his parent, guardian, adult spouse or an adult person into whose custody he has been committed for the time by some court, who is actually, visibly and personally present at

the time the alcoholic liquor is bought or received by him or possessed by him or served or delivered to him." (Emphasis added)

Section 40A-22-1, NMSA, 1953 Comp., establishes the following crimes:

"Resisting or obstructing an officer. -- Resisting or obstructing an officer consists of:

A. knowingly obstructing, resisting or opposing any officer of this state or any other duly authorized person serving or attempting to serve or execute any process or any rule or order of any of the courts of this state or any other judicial writ or process; or

B. resisting or abusing any judge, justice of the peace or peace officer in the lawful discharge of his duties.

Whoever commits resisting or obstructing an officer is guilty of a petty misdemeanor." (Emphasis added)

Section 39-1-1, NMSA, 1953 Comp., specifies the duty of all peace officers in New Mexico to investigate violations of criminal laws of the state:

"Investigation of criminal violations -- Commencement of prosecution -- Co-operation -- Removal. -- It is hereby declared to be the duty of every sheriff, deputy sheriff, constable and every other peace officer to investigate all violations of the criminal laws of the state of New Mexico which are called to the attention of any such officer or of which he is aware, and it is also declared the duty of every such officer to diligently {**160*} file a complaint or information, if the circumstances are such as to indicate to a reasonably prudent [sic] person that such action should be taken, and it is also declared his duty to cooperate with and assist the attorney general, district attorney, or other prosecutor, if any, in all reasonable ways. Failure to perform his duty in any material way shall subject such officer so failing, to removal from office and payment of all costs of prosecution."

See also Sections 39-2-17, 14-12-2, 15-40-2 and 15-40-11, NMSA, 1953 Comp.

There is a conflict between Section 46-10-12.10 and Criminal Code Section 40A-22-1 when a liquor licensee or his agent is penalized by either permitting or prohibiting the attendance on his licensed premises of a police officer under 21 years of age but in the lawful performance of his duties.

The other statutes quoted above could both prohibit and require the performance of certain identical acts by peace officers who are under 21 years of age. Thus there is also a conflict between Section 46-10-12(B) of the Liquor Control Act and Section 39-1-1 when peace officers under the age of 21 years and engaged in the lawful performance of their duties either receive or possess liquor as evidence.

Conflicts between statutes must be avoided and reconciled, if possible, by giving effect to the conflicting laws consistently with legislative intent and avoiding absurd or unreasonable results. **Alvarez v. Board of Trustees**, 62 N.M. 319, 309 P.2d 989 (1957); **In re Martinez' Will**, 47 N.M. 6, 132 P.2d 422 (1943). The Liquor Control Act restrictions on both minors and licensees described above evidence the legislature's intent to prohibit unsupervised consumption and use of alcoholic beverages by citizens under twenty-one years of age and the attendant adverse consequences.

Collective protection of society against antisocial acts is the legislature's purpose in creating a mandatory duty for peace officers to investigate all violations of criminal laws and prohibiting interference with the performance of that duty. Because peace officers under twenty-one years of age are prohibited from consuming alcoholic beverages which are taken as evidence, unless required by law to do so in an undercover capacity, and because these peace officers are trained to deal with persons intoxicated by alcoholic beverages and through their jobs as peace officers have intensive, first-hand exposure to the social consequences of using alcoholic beverages without any personal receipt or possession, the legislative intent behind the laws is given effect and the conflict is resolved by answering both questions in the negative. Absurd and unreasonable results are also avoided by this analysis of the conflicts.

Furthermore, a statute enacted for the primary purpose of dealing with a particular subject and prescribing terms and conditions covering that subject supersedes a general statute which does not refer to that subject although it is broad enough to cover the subject. **Varney v. City of Albuquerque**, 40 N.M. 90, 55 P.2d 40, 106 ALR 222 (1936); see also **Martinez v. Cox**, 75 N.M. 417, 405 P.2d 659 (1965); **State v. Lujan**, 76 N.M. 111, 412 P.2d 405 (1966). Under the circumstances stated above, which create conflicts between the duties of peace officers, duties of licensees {**161*} and agents, the prohibitions of the Liquor Control Act and the Criminal Code, we believe the provisions of Section 39-1-1 to be a more specific statute superseding Section 46-10-12(B), and the prohibition of Section 40A-22-1 to be a more specific law superseding Section 46-10-12.10, when conflicts exist. Consequently, we must answer both questions in the negative.

By: F. Scott MacGillivray

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